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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
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12 DENNIS PALMER, ) Case No. ED CV 12-870 BRO (MRW)  
13 Plaintiff, )  
14 vs. ) ORDER DISMISSING ACTION  
15 FRANCISCO QUINTANA, et al., ) WITHOUT PREJUDICE  
16 Defendants. )  
17 \_\_\_\_\_ )  
18  
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20 The Court vacates the reference of this action to the Magistrate Judge and  
21 dismisses this action without prejudice.

22 \* \* \*

23 This is a prisoner civil rights action involving a former federal inmate at FCI  
24 Victorville. Plaintiff filed a complaint against the warden and numerous medical  
25 and correctional personnel at the prison. The allegations related to the regularity  
26 and frequency by which Plaintiff, a diabetic, received insulin and medical care.  
27 (Docket # 5.)  
28

1 Magistrate Judge Wilner reviewed the original complaint pursuant to the  
2 Prison Litigation Reform Act. (Docket # 7.) Judge Wilner ordered the complaint  
3 to be served on four named defendants. However, Judge Wilner determined that  
4 Plaintiff failed to plead a plausible cause of action against the remaining  
5 defendants. Plaintiff subsequently filed two amended complaints. (Docket # 9,  
6 12.) Judge Wilner reviewed those pleadings and again declined to order them  
7 served on defendants.

8 The U.S. Marshals Service served two of the defendants (Allen and  
9 Wolverton). The Marshals Service was unable to serve the other two defendants  
10 for whom Judge Wilner ordered service. Plaintiff was unable to provide sufficient  
11 information to allow the Marshals Service to effect service of process. (Docket  
12 # 32, 33.)

13 Defendants Allen and Wolverton moved to dismiss the action for failure to  
14 state a claim. (Docket # 19.) In May 2013, the Court granted the motion to  
15 dismiss the claims as to those served parties. (Docket # 45.) The ruling was  
16 without prejudice to Plaintiff attempting to replead his claims against Allen and  
17 Wolverton. Additionally, the Court dismissed the unserved defendants without  
18 prejudice.

19 Judge Wilner's dismissal order directed Plaintiff to file an amended  
20 complaint by early June 2013 or face dismissal of the entire action. (Docket # 45  
21 at 9.) Plaintiff failed to do so. The Court subsequently issued an order to show  
22 cause why the action should not be dismissed returnable in July 2013. (Docket  
23 # 46.) To date, Plaintiff has not filed anything in response to the Court's orders.<sup>1</sup>

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26 <sup>1</sup> The Court confirmed through the BOP's website that Plaintiff is  
27 currently housed at the Federal Medical Center in Springfield, Missouri, which is  
28 the address listed on the Court's docket.

1 Federal Rule of Civil Procedure 41(b) provides that “[i]f the plaintiff fails to  
2 prosecute or to comply with these rules or a court order, a defendant may move to  
3 dismiss the action or any claim against it.” Dismissal also may be ordered by the  
4 Court sua sponte. Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962). Dismissal  
5 of a civil action under Rule 41 may be appropriate to advance the public’s interest  
6 in the expeditious resolution of litigation, the court’s need to manage its docket,  
7 and to avoid the risk of prejudice to defendants. Omstead v. Dell, Inc., 594 F. 3d  
8 1081, 1084 (9th Cir. 2010); Ferdik v. Bonzelet, 963 F.2d 1258, 1263 (9th Cir.  
9 1992). Additionally, a court should consider the public policy favoring disposition  
10 of cases on their merits and the availability of less drastic alternatives in its  
11 evaluation. Carey v. King, 856 F.2d 1439, 1440 (9th Cir.1988); Henderson v.  
12 Duncan, 779 F.2d 1421, 1423 (9th Cir.1986).

13 In the current case, the Court finds dismissal is appropriate. Over the past  
14 few months, Plaintiff demonstrated that he has no interest in pursuing this civil  
15 action. Plaintiff failed to comply with several clear, direct instructions from the  
16 magistrate judge after the dismissal of the complaint. (Docket # 45, 46.) Those  
17 instructions required Plaintiff to file amended complaints that complied with  
18 federal law. Plaintiff failed to do so. Moreover, Plaintiff’s earlier attempts at  
19 amending his complaint were unsuccessful in stating viable civil rights causes of  
20 action.

21 Plaintiff’s conduct has unnecessarily delayed the litigation. As a result, the  
22 Court, the government, and the public have a strong interest in terminating this  
23 action. Furthermore, because Plaintiff is a pro se litigant who has not responded to  
24 the Court’s most recent notices about the status of the case, no sanction short of  
25 dismissal will be effective in moving this case forward. Carey, 856 F.2d at 1440.

1 Therefore, this action is DISMISSED without prejudice.

2 IT IS SO ORDERED.

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4 DATED: August 16, 2013



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6 HON. BEVERLY REID O'CONNELL  
7 UNITED STATES DISTRICT JUDGE  
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